

qrulepubliccomments

From: VALERIE BASSETT [VALERIE_BASSETT@bphc.org]
Sent: Friday, January 27, 2006 5:37 PM
To: qrulepubliccomments
Subject: BPHC Q comments

Attachments: 2006 BPHC on CDCregs42 CFR 70-1FINAL.doc



2006 BPHC on
DCregs42 CFR 70-..

I am submitting the attached letter from Anita Barry, MD, MPH, Director of Communicable Disease Control for the Boston Public Health Commission regarding the Proposed Revision to 42 CFR 70 and 71: Control of Communicable Diseases.

Please confirm receipt of this transmission and the attached document by replying to me at this email.

Thank you very much.
Best,
Valerie Bassett



January 27, 2006

Centers for Disease Control and Prevention
Division of Global Migration and Quarantine
ATTN. Q Rule Comments
1600 Clifton Road, NE
Atlanta, GA 30333

Re: Boston Public Health Commission Comments Regarding the Proposed Revision to
42 CFR 70 and 71: Control of Communicable Diseases

To Whom It May Concern:

Control of communicable disease is an important responsibility of public health agencies at the local, state and federal levels. The proposed revisions to 42 CFR 70 and 71 would be appropriate, with some changes, in the event the Secretary or Director declared a public health emergency. However, for routine communicable disease response, we strongly affirm that the best way to get the job done is to keep the response in the jurisdiction of the local health authorities, as it is now and has historically been.

The legal foundation cited for federal authority in this regulation is the "Commerce Clause" and Congress' authority to regulate foreign and interstate commerce. While Section III Legal Basis of Federal Quarantine Authority, claims that "[t]he proposed regulation is consistent with the scope of the federal government's commerce power because it seeks to regulate the uses of the channels of foreign and interstate commerce..." the actual language of the Proposed Rules greatly expands its scope beyond the regulation of interstate commerce. By way of example, Section 70.13 Screening to detect ill persons, provides that "The Director may, at airports or other locations..." This loosely worded section would allow a federal agency to screen "persons to detect the presence of ill persons" absolutely anywhere, regardless of its connection to interstate or foreign commerce. Likewise, the wording of Section 70.14 Provisional quarantine, provides that a person may be quarantined if they are "A probable source of infection to persons who will be moving from a State to another State." Given the nature of an infectious disease, a person may be the "probable source" for the entire population. In addition a person moving from a State to another State is not necessarily involved in interstate commerce. Thus this language could be used to quarantine anyone, regardless of the lack of any nexus to interstate or foreign commerce.

The proposed rule Section F, attempts to address the issue of Federalism by citing Section 361(e) of 42 U.S.C. 264(e) for the proposition that nothing in the rule would

supersede any State or Local law or regulation as long as it doesn't conflict with the federal rule. Generally speaking, when the Federal Gov. claims jurisdiction over a field, its laws and rules preempt all State and Local laws and regulations. While Section VII Other Administrative Requirements seems to indicate that the quarantine regulation would only be invoked in the event of a "domestic emergency" and that the "control of disease transmission with the United States is largely to be the province of state and local health authorities," the comprehensive nature of the proposed rules can be and probably will be interpreted as the federal government preempting the field of quarantine. While the State and Local government may still enact laws and regulations that don't "conflict" with the federal rules, it is difficult to imagine a local reg that differed in any substantive manner from the federal rules that wouldn't "conflict" with the federal provisions. For example, the proposed Federal rule requires the airlines to report any sickness or death on a flight to the CDC but not the local health authorities. If the local health authorities passed a regulation requiring that the information be provided to the local health authority, would this "conflict" with the federal rule? It probably is safe to assume that the airlines would think so. Given this scenario, it is difficult to imagine how Boston EMS would be able to provide emergency medical services to Logan Airport, as we do currently. The proposed rules also provide for a three day quarantine period. Can a local or state health authority provide for a longer or shorter period without conflicting with the federal rules?

A review of the proposed regulation raises additional concern in three general areas:

- adequacy of resources available to the Centers for Disease Control and Prevention (CDC) to carry out mandated activities and lack of clarity about who will pay for certain quarantine activities;
- proper attention to the rights of detainees, and
- communication between CDC and local public health agencies.

The Boston Public Health Commission offers the following section-by-section specific comments on the proposed regulations.

Section 70.10, 71.13: The regulations should require that the "establishment of institutions, hospitals, and stations" be done in consultation with the local public health authority.

Section 70.1 and 70.16, paragraph (e): The pre-communicable stage or incubation should be eliminated from the qualifying stage. Otherwise, people who are not capable of transmitting to disease to others would be detained through quarantine. Restriction of civil liberties should be done to the minimum extent possible.

Section 70.2: The regulations require timely evaluation of ill passengers. Does the CDC have adequate resources (particularly personnel) to provide this service?

Sections 70.2, 71.6, and 71.8: Having a single point of contact for reports of illness or death on airplanes or ships may improve reporting. However, the Director should

communicate reports of illness or death within one hour of her receipt of a report to the local public health authority where receiving airport or ship terminal is located.

Sections 70.2, 71.6 and 71.8: This section references public health notices to be provided to passengers and crew.

- Will these notices be available in different languages?
- Will they contain specific information about who can be contacted for more information?

Section 70.4, 71.10:

- Who will perform contact tracing?
- All public health authorities should have timely access to appropriate data.
- The regulation should indicate who will have access to contact data, and rules for data sharing (if any is anticipated) should be developed ahead of time.
- In addition, the contact information being requested is too extensive and not critical to contact tracing. The last two listed items, information on traveling companions, itinerary, and return flight should be deleted.

Section 70.4 (5) (and others): The term “head of household” when used in reference to children should be replaced by the term “parent or guardian.”

Section 70.6: If travel permits are issued, who will monitor this process and verify that individuals have travel permits?

Sections 70.9 and 71.3:

- Who pays for vaccination clinics? Is it intended to be covered only by the fees collected?
- What happens if individuals cannot or will not pay for vaccination? There should be public financing for this situation.
- Who has access to personal information collected as part of the vaccination process?

Section 70.13: This section lacks clarity about roles and responsibility. When a person or group of persons must undergo a screening, who will arrange for the screening site (with appropriate considerations for privacy), and who is responsible for transport to the site of those being screened?

Section 70.14 and others: Reference is made to “one *business* day” or “three *business* days” in various parts of the proposed regulation. These should be changed to “one day” or “three days.” Using three *business* days could result in a prolonged provisional quarantine period for a person unfortunate to become ill on the Friday evening of a long weekend. Furthermore, the analogy to a three-day holding period for “alimentary canal smugglers” is inappropriate. In the smuggling situation, three days may be required to ensure that no illicit substances are present. In the quarantine situation, prompt initiation of clinical and laboratory investigations should result in the ability to make a decision

regarding communicability and the need for quarantine in a much shorter time period. In most cases, the decision regarding quarantine should be reached in less than three days.

Sections 70.14, paragraph (e) and, 70.16 paragraphs (b), (c), and (d), and 71.17: The regulations should more clearly reflect the fact that an agency that imposes quarantine also has a responsibility to ensure that persons being detained receive adequate support, including food, shelter, medical care, etc. The phrase “persons subject to provisional quarantine *may* be offered medical treatment, prophylaxis, or vaccination” should be changed to “*must be offered if medically indicated.*”

Section 70.21: What happens if an ill individual declines to be transported to a hospital or other medical facility? Who is responsible for the transport of an ill individual, including persons who decline to go?

Sections 70.16, 70.21, 71.24 and 71.30: The regulations state that quarantine will be done at a hospital or other medical facility. Hospitals in Boston (and many other areas) are generally close to or at full capacity and are unlikely to be able to house a meaningful number of (probably healthy) people being quarantined. Furthermore, many travelers will not have a home in the area to be able to maintain home quarantine. We have several questions and comments about the quarantine process.

- Given the hospital bed crunch, what type of facility does CDC plan to use to detain people being held under quarantine?
- It should be explicit that it is the responsibility of the agency invoking quarantine to take care of all details such as:
 - security
 - paying for the quarantine facility, whether it is medical or non-medical
- Once a quarantine site is ACTIVATED the regulations should require prompt notification of the local public health agency where the facility is located.
- Who is responsible for enforcing CDC issued quarantine orders?

Section 70.18, 71.22: It is important that persons being served with a quarantine order understand the importance of such an order. Arrangements to have orders available in multiple languages should be required by the regulation.

Section 70.19: Do persons who are required to undergo a medical exam have the right to choose the examiner? If so, are specific qualifications required for the examiner, and who is responsible for payment? This information should be part of the regulations.

Section 70.20: The regulation states that the quarantine order will be deemed final administrative action either when the Director has accepted or rejected the hearing officer’s written recommendation or three business days after the request for a hearing, whichever comes first.” Does this mean if no action is taken for three business days, the order stands?

Sections 70.25 and 70.6: These sections authorize the CDC Director to intervene in a local jurisdiction if there is “inadequate local control,” a term which is not adequately defined. This section should be deleted.

Please feel free to contact me at 617-534-5611 if I can further explain or provide any assistance as you finalize the regulations.

Sincerely,

Anita Barry, M.D., M.P.H.
Director, Communicable Disease Control